

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, *et al.*,

Defendants.

No. C10-1952RSL

ORDER DENYING MOTION TO
DISQUALIFY COUNSEL

This matter comes before the Court on plaintiff's "Motion to Disqualify and Remove Counsel." Dkt. # 11. Plaintiff argues that the law firm of Routh Crabtree Olsen has a conflict of interest with one or more of its clients and that plaintiff may seek to depose Routh Crabtree Olsen employees at some point in this litigation. Having reviewed the papers submitted by the parties and the remainder of the record, the Court finds as follows:

(1) The nature of the alleged conflict of interest is not apparent. Even if the Court assumes that Routh Crabtree Olsen is affiliated with defendant Northwest Trustee Service and serves as its retained or in-house counsel, such service would not bar the firm from representing its client in litigation. Nor is there reason to believe that defendants have an unwaivable concurrent conflict of interest under Rule of Professional Conduct 1.7. At present, defendants' interests are aligned, there are no crossclaims asserted among defendants, and counsel could reasonably believe that she can provide competent and diligent representation to each client.

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1 While there is a theoretical possibility that counsel's representation of one client may eventually
2 limit her ability to represent another, the chances of such a conflict arising are not significant
3 and, if it does arise, the Court will revisit the issue then.

4 (2) Plaintiff's papers suggest that he intends to conduct wide-ranging discovery aimed at
5 uncovering frauds and/or statutory violations that have not been alleged in the complaint. Only
6 discovery that is relevant to plaintiff's Deed of Trust Act ("DTA") claim (and the related
7 common law claims) will be permitted. Plaintiff has raised a colorable challenge to defendants'
8 ability to conduct a non-judicial foreclosure under the DTA and will therefore be permitted to
9 conduct discovery aimed at establishing who was "the holder of the instrument or document
10 evidencing the obligations secured by the deed of trust" on certain dates. Fishing expeditions to
11 discover other malfeasance or wrongs committed by the mortgage industry in the abstract will
12 not be allowed. Whether defense counsel has personal knowledge of any facts or events that are
13 relevant to plaintiff's DTA claim cannot be ascertained at present. Unless and until plaintiff
14 shows that Ms. Buck's deposition is appropriate, the Court need not determine whether counsel
15 will be permitted to act as both counsel and witness.

16 (3) Although this litigation is in its infancy, the Court feels compelled to admonish the
17 parties to treat each other with respect, a modicum of patience, and an assumption of good faith.
18 Contrary to plaintiff's repeated accusations, defendants are not perpetuating a falsehood when
19 they say that the Trustee postponed the foreclosure in response to plaintiff's complaint. When
20 the motion for temporary restraining order was filed, court staff followed their normal
21 procedures and contacted defendants to determine if they had been served and when a response
22 could be expected. The Court prefers to handle such motions in an expeditious, but orderly,
23 fashion with input from both sides. As noted in the first order issued by the Court, "[d]efendant
24 Northwest Trustee Services, after consultation with OneWest Bank, FSB, [] agreed to postpone
25 the foreclosure sale until January 7, 2011, to determine whether plaintiff has reinstated payment
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1 and/or is eligible for modification of the loan.” Dkt. # 2 at 1. The postponement allowed both
2 sides to file memorandum and to appear at oral argument regarding the propriety of an
3 injunction. Defendants are in no way misrepresenting their actions in this matter, and plaintiff
4 should refrain from leveling unfounded accusations.

5 For their part, defendants should recognize that plaintiff is acting *pro se* in this
6 matter and will occasionally bring motions or raise arguments that are substantively or
7 procedurally unsound. That does not, however, mean that he is acting in bad faith or with an
8 improper purpose. Plaintiff is expected to follow the local rules of this district (found at
9 <http://www.wawd.uscourts.gov/referencematerials/localrules.htm>) and the Federal Rules of Civil
10 Procedure, but his papers will be read liberally and, until proven otherwise, he is entitled to a
11 presumption of good faith. Defendants are further advised that the procedure for seeking Rule
12 11 sanctions is not optional: failure to provide the required safe harbor or to make the request in
13 a separate motion is grounds for denial and may trigger an award of reasonable expenses to the
14 prevailing party.

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16 For all of the foregoing reasons, plaintiff’s motion to disqualify counsel is
17 DENIED without prejudice to the issue being raised again should counsel become a witness in
18 this action and/or defendants become adverse to each other. Plaintiff is reminded that his first
19 monthly payment of \$2,347.56 must be paid into the registry of the Court on or before February
20 15, 2011. Failure to make timely payments into the registry may result in the expedited sale of
21 the property.

22 Dated this 9th day of February, 2011.

23 

24 Robert S. Lasnik

25 United States District Judge